

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE,	:	
	:	IK02-11-0188 R1
v.	:	IK02-11-0189 R1
	:	IK02-11-0190 R1
FRED T. CALDWELL,	:	
	:	I.D. No. 0207018104B
Defendant.	:	

Submitted: April 18, 2007
Decided: July 18, 2007
Reissued: February 12, 2009*

ORDER

Upon Defendant's Motion for Postconviction Relief.
Denied.

Jason C. Cohee, Esquire, Department of Justice, Wilmington, Delaware; attorneys for the State.

Fred T. Caldwell, *pro se*

WITHAM, R.J.

**This Order is being re-issued pursuant to a motion by Defendant claiming he did not receive the original order and did not know about it until he received a copy of the docket on January 31, 2009.*

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Upon consideration of the Defendant's Motion for Postconviction Relief, the Commissioner's Report and Recommendation, Defendant's Appeal from the Commissioner's Report and Recommendation, and the record in this case, it appears that:

The Defendant, Fred T. Caldwell, was found guilty following a jury trial on September 24, 2003 of one count Trafficking in Cocaine, 16 *Del. C.* § 4753, one count of Delivery of Cocaine, 16 *Del. C.* § 4751, and one count of Conspiracy in the Second Degree, 11 *Del. C.* § 512. Prior to trial, a Motion to Suppress the admission of Caldwell's statement to police was denied by the Court. Following the trial, the State filed a motion to declare Caldwell a Habitual Offender pursuant to 11 *Del. C.* § 4714(b). Prior to sentencing, on December 10, 2003, a hearing was held on the State's Habitual Offender Motion resulting in the Court granting the motion and declaring the Defendant a Habitual Offender. The Court then sentenced Caldwell to life in prison pursuant to 11 *Del. C.* § 4714(b) and two years additional incarceration.

A timely Notice of Appeal was filed on January 13, 2004 by Caldwell's counsel. Subsequently, Caldwell moved to be permitted to proceed *pro se* on his appeal. The Delaware Supreme Court remanded the matter to this Court for a determination concerning Caldwell's intention to proceed *pro se* and his competence to make such a request. This Court held an evidentiary hearing on the matter on June 3, 2004, and the Court found that Caldwell knowingly and voluntarily wished to proceed *pro se* in his appeal. The Defendant filed his brief before the Supreme Court and raised the following two claims:

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- a) That the Superior Court should have given a jury instruction regarding the gaps in his video taped two and a half hour interview with police or in the alternative should have suppressed the tape, and;
- b) That the prosecution violated his rights by calling an individual, Warner Henry, Caldwell's "co-defendant."

The Supreme Court granted the State's Motion to Affirm and found each of Caldwell's claims meritless.¹ Caldwell then filed a Motion for Postconviction Relief, pursuant to Superior Court Criminal Rule 61, in which he raised fourteen grounds for relief, including claims of ineffective assistance of counsel.

The matter was referred to the Court Commissioner for findings of fact and recommendation pursuant to 10 *Del. C.* § 512(b) and Superior Court Criminal Rule 62. The Commissioner has filed a Report and Recommendation recommending that the Court deny the Defendant's Motion for Postconviction Relief. The Defendant objected to the Commissioner's Report.

A careful review of the Court Commissioner's Report and Recommendation along with the Defendant's Appeal therefrom reveals that the Defendant merely restates and repackages his arguments made to the Commissioner.

NOW, WHEREFORE, after careful *de novo* review of the record in this action, and for the reasons stated in the Commissioner's Report and Recommendation dated March 27, 2007,

IT IS ORDERED that the Commissioner's thoughtful and well-reasoned

¹*Caldwell v. State*, 2004 Del. LEXIS 582.

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Report and Recommendation is adopted by the Court and Defendant Caldwell's motion for Postconviction Relief is *denied* as procedurally barred.

/s/ William L. Witham Jr.
Resident Judge

WLW/dmh

oc: Prothonotary

xc: Jason C. Cohee, Esquire

Fred T. Caldwell, *pro se*

Hon. Andrea M. Freud